

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of the Cable)	
Television Consumer Protection)	MM Docket No. 92-260
and Competition Act of 1992)	
)	
Cable Home Wiring)	DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF BARTHOLDI CABLE COMPANY, INC.^{1/}

The consensus among potential cable competitors is that the Commission should include loop-through wiring within the definition of "inside wiring" when all subscribers in a multiple dwelling unit ("MDU") served by a loop-through wire elect to switch to a new multichannel video programming distributor ("MVPD").^{2/} Not surprisingly, most cable operators -- who typically control such wiring and, therefore, control competition in loop-through MDUs -- argue against including loop-through wiring within the definition of inside wiring under any circumstances.^{3/} These Reply Comments address the inaccuracies and misconceptions contained in the

^{1/} Bartholdi Cable Company, Inc. (formerly known as Liberty Cable Company, Inc.) filed Comments in the above-captioned proceeding under the name "Liberty Cable Company, Inc." To minimize any confusion that may result from this name change, these Reply Comments will refer to Liberty's request to include certain loop-through wiring within the definition of cable inside wiring as "Liberty's loop-through proposal."

^{2/} See, e.g., Ameritech Comments at 2; Bell Atlantic Comments at 2; Multimedia Comments at 14; OpTel Comments at 5; NYNEX Comments at 2; and RCN Comments at 3.

^{3/} See, e.g., Cable Telecommunications Association Comments at 1-2; Cox Comments at 30; NCTA Comments at 1-2; Time Warner Comments at 2.

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Comments of those who oppose redefining loop-through wiring as cable inside wiring.

First, a number of parties assert that Liberty's loop-through wiring proposal essentially would force cable operators to relinquish their wire to a competitor.^{4/} This is incorrect. According to Liberty's proposal, cable operators may be required under certain circumstances to sell their loop-through wiring to an MDU owner, but never to a competing MVPD.^{5/} If an MDU owner decides to purchase the wiring, the owner could use it to access the services of any MVPD including those of the original cable operator.^{6/}

^{4/} See, e.g., New York City Department of Information Technology and Telecommunications ("NYCDITT") Comments at 5; Cable Telecommunications Association Comments at 2.

^{5/} Liberty's proposal would give MDU owners an option -- not an obligation -- to purchase loop-through wiring. This distinction should alleviate the concerns of some commenters who fear MDU owners may not want to own cable inside wiring. See BOMA Comments at 15 n.8 & 16.

^{6/} Some commenters fail to understand why the Commission should compel incumbent cable operators to offer loop-through wiring for sale to MDU owners. BOMA asserts, for example, that MDU owners have sufficient bargaining power to purchase loop-through wiring any time they see fit. See BOMA Comments at 14. Bartholdi's experience shows, however, that incumbent cable operators are unwilling to sell their wiring to building owners. Indeed, cable operators have strong economic incentives not to sell their wiring, particularly in those jurisdictions where state mandatory access laws prevent building owners from evicting franchised cable operators. Since building owners strongly resist duplicative inside wiring, incumbent cable operators can and do prevent competing MVPDs from providing service to MDU residents simply by retaining ownership of the loop-through system. Further, installing duplicative wiring is physically impossible in many older loop-through systems (such as those commonly found in hotels) since such wiring is often completely embedded within the structure of the building.

These same parties also argue that Liberty's proposal should be rejected because it would allow alternate MVPDs to compete by appropriating a portion of an incumbent's distribution plant. NYCDITT asserts that, under the proposal, cable operators would be burdened unfairly with the additional cost of rewiring a building if requested to do so.^{7/} NYCDITT's argument, however, is based on the faulty premise that cable operators would be disadvantaged if forced to incur duplicative costs to rewire buildings. In addition to mischaracterizing an MDU owner's purchase of loop-through wiring as an "appropriation" by a competing MVPD, NYCDITT's Comments distort the true financial obligations imposed on cable operators. NYCDITT fails to recognize that cable operators would be appropriately compensated under the Commission's rules for the loop-through wiring purchased by the MDU owner. NYCDITT also fails to acknowledge that cable operators can (and do) recoup installation costs as part of their fees. Thus, Liberty's proposal would not disadvantage incumbent cable operators, but would permit all MVPDs to compete on a more level playing field.

Second, some parties seem to believe that subscribers in buildings with loop-through wiring have the ability to choose their video service provider and that these subscribers will lose that ability under Liberty's proposal.^{8/} As a practical matter, the

^{7/} NYCDITT Comments at 5.

^{8/} See, e.g., NYCDITT Comments at 6 ("[A wallplate demarcation point] would allow subscribers in loop-through systems to switch easily between competing MVPDs. Moreover, it would assure that such subscribers actually have a choice between MVPDs and
(continued...)

system architecture of loop-through wiring prevents individual subscribers from independently choosing separate services using the loop. This constraint exists regardless of who controls the loop and is exacerbated when the incumbent cable operator is the "gate-keeper." MDU owners are also unwilling in many cases to allow a second service provider (i.e., a nonfranchised MVPD) to enter their building. Thus, unless a state mandates access for both franchised and nonfranchised MVPDs, most residents of loop-through MDUs have no ability to choose a video service provider.

Third, some parties argue that Liberty's proposal is beyond the Commission's statutory authority because loop-through wiring is located outside the premises of subscribers.^{8/} As discussed more fully in Bartholdi's Reply Comments filed today in CS Docket No. 95-184, the Commission has ample authority under Title I of the Communications Act of 1934, as amended, to regulate all cable wiring, both inside and outside of a subscriber's premises. This authority is in no way limited by Congress' enactment of the Cable Communications Policy Act of 1984 or the 1992 Cable Act.

Fourth, Time Warner asserts that the rate of resident turnover in MDUs warrants rejection of Liberty's proposal. Specifically, Time Warner states that:

^{8/} (...continued)
would promote competition between incumbent cable operators and alternative MVPDs.")

^{9/} See, e.g., BOMA Comments at 3; Time Warner Comments at 3.

one month, the MDU building could be within the narrow situation proposed by Liberty, and the next month, it could be outside the situation. This constant switching from one situation to the other would mean that ownership and control of the wiring would also be in constant flux. Such a situation is administratively implausible, and could result in frequent disruption of service for the residents of the MDU.^{10/}

This statement demonstrates that Time Warner does not understand Liberty's proposal. According to the proposal, if all subscribers on a loop agree to change service providers, and the MDU owner decides to purchase the loop-through wiring, permanent ownership in that wiring passes to the MDU owner. The wiring does not revert back to the cable operator or to another MVPD each time a MDU resident decides he or she wants a different service provider.

Fifth and finally, Time Warner is patently wrong when it alleges that Bartholdi (Liberty) uses "strong-arm tactics" to coerce residents to terminate Time Warner's service.^{11/} Bartholdi emphatically denies this baseless allegation. The allegation is particularly ironic since the record in this proceeding is replete with evidence that Time Warner has repeatedly threatened and prosecuted multimillion dollar lawsuits against MDU owners to scare them away from doing business with Bartholdi (Liberty), and has sought injunctions against Bartholdi (Liberty) to snuff out any possibility of competition.^{12/}

^{10/} Time Warner Comments at 4-5.

^{11/} Time Warner Comments at 5.

^{12/} See Ex Parte Letter filed by Liberty in this proceeding on November 14, 1994, at 8-10, which vividly describes various multimillion dollar lawsuits filed against potential Liberty
(continued...)

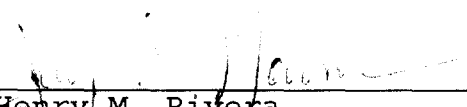
For the reasons discussed herein and in its previous filings in this proceeding, Bartholdi respectfully asks the Commission to include loop-through wiring in the cable inside wiring definition in those limited situations where all subscribers on a loop-through wire elect to terminate a cable operator's service. By classifying loop-through wiring as inside wiring, the Commission will encourage (though not require) MDU owners to allow MVPDs to access their buildings.

Respectfully submitted,

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^{12/} (...continued)
customers. See also Liberty Comments in CS Docket No. 95-184 at 15-16.